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U.S. PATENT & TRADEMARK OFFICE**REPORT ON THE
FILING OR DETERMINATION OF AN
ACTION REGARDING A PATENT OR
TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been

filed in the U.S. District Court Northern District of California on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
CV 07-03403 EMC	6/28/07	Northern District of California
PLAINTIFF	DEFENDANT	
KYPHON INC	COZMED	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,607,544		(See attached Complaint)
2 6,623,505		
3 6,979,341		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
Richard W. Wieking	Simone Voltz	July 2, 2007

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

COPY

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**ORIGINAL
FILED**

JUN 28 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 | Attorneys for Plaintiff KYPHON INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KYPHON INC.

Plaintiff.

v.

COZMED, LLC and
PETER K. PARK, an individual.

Defendant(s).

C 07 Case No. 3403

COMPLAINT FOR RE

INFRINGEMENT

DEMAND FOR JURY TRIAL

18 Plaintiff Kyphon Inc., for its Complaint, alleges:

PARTIES

20 1. Plaintiff Kyphon is a corporation incorporated under the laws of the State of
21 Delaware with its principal place of business at 1221 Crossman Avenue, Sunnyvale, California
22 94089

23 2. Kyphon is a pioneer in the field of kyphoplasty, a minimally invasive surgical
24 procedure for repairing spinal fractures. Such fractures may result from osteoporosis, cancer, or
25 medical treatments such as chemotherapy. Balloon kyphoplasty involves the surgical insertion of
26 a balloon into the fractured bones of the spine to raise them and restore them to their correct
27 position. As a result, kyphoplasty can help relieve the significant back pain and stooped posture
28 that many spinal fracture sufferers experience.

3. Defendant Cozmed, LLC, sometimes referred to as "Cozumed," is a California limited liability corporation with its principal place of business at 41909 Albrae Street, Fremont, California, 94538.

4. On information and belief, defendant Peter K. Park is the President and Operating Manager for Cozmed and controls the decisions and actions undertaken by Cozmed.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and § 1338(a) (patents).

6. Cozmed is subject to personal jurisdiction in this District because its principal place of business is in this District and Cozmed has committed acts of infringement in this District.

7. Mr. Park is subject to personal jurisdiction in this District because he has worked or lived in this District and committed acts of infringement in this District.

8. Venue is proper under 28 U.S.C. §§ 1391, 1400(b).

INTRADISTRICT ASSIGNMENT

9. Pursuant to Civil L.R. 3-2(c), the Intradistrict Assignment rules do not apply to this Complaint.

FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. 6,607,544)

10. Kyphon is the owner by assignment of all rights, title, and interest in and to United States Patent No. 6,607,544 ("the '544 patent"), issued on August 19, 2003 and entitled "Expandable Preformed Structures for Deployment in Interior Body Regions." The '544 patent is attached as Exhibit A.

11. Cozmed and Mr. Park are infringing or have infringed the '544 patent directly or indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in performing kyphoplasty. Defendants' products encompass an invention claimed by the '544 patent or are a substantial part of such an invention. Defendants' products are specially made or

adapted for use in an invention claimed by the '544 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Upon information and belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in the use of their products in a manner that infringes or would infringe the '544 patent.

12. Defendants' infringement is without the consent or other authority of Kyphon.
Neither Cozmed nor Mr. Park is licensed under the '544 patent.

13. On information and belief, Defendants have infringed or are infringing the '544 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that their conduct is lawful. Defendants' infringement of the '544 patent has been and continues to be willful.

14. Kyphon is entitled to damages for Defendants' infringement of the '544 patent and trebled damages for Defendants' willful infringement of the '544 patent.

15. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of the '544 patent.

SECOND CAUSE OF ACTION

(Infringement of U.S. Patent No. 6,623,505)

16. Kyphon is the owner by assignment of all rights, title, and interest in and to United States Patent No. 6,623,505 (“the ‘505 patent”), issued on September 23, 2003 and entitled “Expandable Structures for Deployment in Interior Body Regions.” The ‘505 patent is attached as Exhibit B.

17. Cozmed and Mr. Park are infringing or have infringed the '505 patent directly or indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in performing kyphoplasty. Defendants' products encompass an invention claimed by the '505 patent or are a substantial part of such an invention. Defendants' products are specially made or adapted for use in an invention claimed by the '505 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Upon information and

belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in the use of their products in a manner that infringes or would infringe the '505 patent.

18. Defendants' infringement is without the consent or other authority of Kyphon.
Neither Cozmed nor Mr. Park is licensed under the '505 patent.

19. On information and belief, Defendants have infringed or are infringing the '505 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that their conduct is lawful. Defendants' infringement of the '505 patent has been and continues to be willful.

20. Kyphon is entitled to damages for Defendants' infringement of the '505 patent and trebled damages for Defendants' willful infringement of the '505 patent.

21. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of the '505 patent.

THIRD CAUSE OF ACTION

(Infringement of U.S. Patent No. 6,979,341)

22. Kyphon is the owner by assignment of all rights, title, and interest in and to United States Patent No. 6,979,341 ("the '341 patent"), issued on December 27, 2005 and entitled "Expandable Preformed Structures for Deployment in Interior Body Regions." The '341 patent is attached as Exhibit C.

23. Cozmed and Mr. Park are infringing or have infringed the '341 patent directly or indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in performing kyphoplasty. Defendants' products encompass an invention claimed by the '341 patent or are a substantial part of such an invention. Defendants' products are specially made or adapted for use in an invention claimed by the '341 patent and are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Upon information and belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in the use of their products in a manner that infringes or would infringe the '341 patent.

1 24. Defendants' infringement is without the consent or other authority of Kyphon.

2 Neither Cozmed nor Mr. Park is licensed under the '341 patent.

3 25. On information and belief, Defendants have infringed or are infringing the '341
4 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that
5 their conduct is lawful. Defendants' infringement of the '341 patent has been and continues to be
6 willful.

7 26. Kyphon is entitled to damages for Defendants' infringement of the '341 patent and
8 trebled damages for Defendants' willful infringement of the '341 patent.

9 27. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants
10 will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35
11 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of
12 the '341 patent.

13 WHEREFORE, Kyphon requests judgment:

14 A. Declaring that Cozmed and Mr. Park have infringed the '544, '505, and '341
15 patents;

16 B. Preliminarily and permanently enjoining Cozmed and Mr. Park and their officers,
17 directors, employees, agents, servants, successors, assigns, or any other person or
18 entity acting in privity in concert with them from further infringement of the '544,
19 '505, and '341 patents;

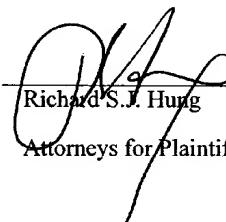
20 C. Awarding Kyphon its damages, together with pre-judgment interest and costs, for
21 Cozmed and Mr. Park's infringement of the '544, '505, and '341 patents, and
22 increasing said damages by up to three times under 35 U.S.C. § 284;

23 D. Declaring this to be an exceptional case under 35 U.S.C. § 285 and awarding
24 Kyphon its reasonable attorneys' fees, costs, and disbursements in this action, with
25 interest; and

26 E. Awarding Kyphon such other and further relief as this Court may deem just and
27 proper.

1 Dated: June 28, 2007

2 MICHAEL A. JACOBS
3 GRANT L. KIM
4 RICHARD S.J. HUNG
5 MORRISON & FOERSTER LLP

6 By: 

7 Richard S.J. Hung

8 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Kyphon Inc. demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

Dated: June 28, 2007

MICHAEL A. JACOBS
GRANT L. KIM
RICHARD S.J. HUNG
MORRISON & FOERSTER LLP

By

Richard S.J. Hung

Atorneys for Plaintiff